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U.S. Citizenship
and Immigration
Services

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FILE:

Office: FRANKFURT, GERMANY

Date: MAY 21 2008

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v),
of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Frankfurt, Germany. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant is a native and citizen of the Czech Republic who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) the Act, which the Officer-in-Charge denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the Officer-in-Charge, dated February 17, 2006*

The AAO will first address the finding of inadmissibility of unlawful presence.

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and ((II) are not counted in the aggregate.¹ For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.²

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists).

The record reflects that the applicant entered the United States on a B-2 visitor visa and remained in the United States from February 2001 until May 2004 without any extensions of stay. The record is not clear as to when the applicant's authorized stay in the United States expired. Had her authorized stay been granted for one year, which is possible, she would have been permitted to remain in the United States until February 2002. For purposes of calculating unlawful presence under section 212(a)(9)(B) of the Act, the applicant would have begun accruing time in unlawful presence on February 2002. From that date to May 2004, the applicant would have accrued over two years of unlawful presence, and when she voluntarily departed from the country, she would have triggered the ten-year-bar. Consequently, the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II), is correct.

¹ Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

² *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

A waiver under section 212(a)(9)(B) of the Act for unlawful presence provides that:

- (v) Waiver. – The Attorney General [now Secretary, Homeland Security, “Secretary”] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not a consideration under this waiver and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s husband. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996).

The record contains letters, a psychological evaluation, a marriage certificate, income tax records, and other documents.

On appeal, counsel states that the psychological evaluation shows the applicant’s husband as having psychological problems. Counsel states that the applicant’s husband would experience extreme hardship if he moved to either the Czech Republic or Albania.

The psychological evaluation dated March 9, 2006 by [REDACTED] states that the applicant’s husband worked 12 to 16 hours each day to save money to purchase a house and have his parents live in the United States due to their poor living conditions in Albania. [REDACTED] states that the applicant’s husband’s parents have medical problems and would not be able to remain in the United States without the support of their son. [REDACTED] states that the applicant married her husband in the Czech Republic in January 2005 and has been there since because of immigration problems. He states that the applicant’s husband conveys that he has stress and anxiety, difficulty sleeping and focusing his attention, headaches, and gastrointestinal distress since returning from the Czech Republic following his marriage. He states that the applicant’s husband indicates that he started smoking and now drinks to calm himself. [REDACTED] conveys that the applicant’s husband states that he is concerned about his ability to function safely on the job. [REDACTED] indicates that the applicant’s husband does not wish to move to the Czech Republic where he will not find employment and will not know the language. He conveys that the applicant’s husband worries that if he were to leave the United States his parents will return to Albania where they will not receive the care they require. [REDACTED] diagnosed the applicant’s husband with the following:

- Axis I: Major depressive disorder, single episode (296.20)
- Axis II: V71.09
- Axis III: Headaches, gastrointestinal distress
- Axis IV: Moderate to severe
- Axis V: GAF current, 50; highest in past year 75

He states that the applicant's husband has reactive depression related to his wife's inability to join him to live in the United States. [REDACTED] conveys that the applicant's husband's symptoms of depression and comorbid anxiety are affecting his ability to function socially and vocationally.

In his letters dated April 25, 2005 and February 26, 2005, the applicant's husband conveys that he dated the applicant for three years before marrying and finds life meaningless without her. He states that he would like to start a family and he states that he owns his house and is self-employed.

The record contains country reports on human rights practices in the Czech Republic and in Albania, a document on the United Nations Convention Against Torture in Albania, and a press release dated January 27, 2006 about torture and ill-treatment in Europe and Central Asia.

The March 9, 2006 letter by [REDACTED] of W.O.W. Window Cleaning states that the applicant's husband has worked with him since 1997; [REDACTED] commends his character.

Another letter of the same date by [REDACTED] indicates that the applicant's wife has been offered a position as a manager with his company with an annual salary of \$50,000.

The income tax records of the applicant's husband for 2005 show business income of \$38,776; for 2004, they show business income of \$30,194; and for 2003, \$18,425.

The March 22, 2006 letter by [REDACTED] conveys that the applicant should be permitted to live in the United States with her husband.

The record contains an indenture for real property made on July 30, 2004 and it contains a mortgage statement.

The April 19, 2006 letter by [REDACTED] describes the medical history of the applicant's mother-in-law. On August 31, 2005, he states that she had tenderness right sacro iliac joint and returned to full-time work and was to return, as needed, in 3 weeks. He also states that the applicant's mother-in-law has hypertension and shoulder pain and is accompanied to her medical appointments by her son because she cannot speak English.

The March 3, 2006 medical report reflects that the applicant exhibited signs of neurasthenia and tetanal due to long-term disconnection from her husband. She was prescribed an antidepressant.

In rendering this decision, the AAO has carefully considered the documentation in the record.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the

extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994)).

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant's husband must be established in the event that he joins the applicant, and in the alternative, that he remains in the United States without her. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record fails to establish that the applicant's husband would endure extreme hardship if he remained in the United States without his wife.

The record contains a psychological evaluation of the applicant's husband. Although the input of a mental health professional is respected and valuable, the submitted evaluation is based on a single interview between the applicant's spouse and [REDACTED] who is a psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment of depression and co-morbid disorder. Furthermore, the conclusions reached in the evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

With regard to family separation, courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

The record reflects that the applicant's husband is very concerned about separation from his wife. However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), "[e]xtreme hardship"

is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant’s husband, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant’s husband, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See *Hassan, Shoostary, Perez, and Sullivan, supra*.

The applicant makes no claim of extreme financial hardship to her husband if he were to remain in the United States without her.

The documentation in the record is insufficient to establish that the applicant’s husband will experience extreme hardship if he were to join the applicant in the Czech Republic or if they were to live in Albania.

The conditions in the country where the applicant’s husband will live if he joined his wife are a relevant hardship consideration. “While political and economic conditions in an alien’s homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives.” *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994) citing *Matter of Anderson*, 16 I & N Dec. 596 (BIA 1978).

Although the applicant’s husband indicates that medical treatment in Albania is not as good as in the United States, the fact that medical facilities in a foreign country are not as good as in the United States is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130, 134 (BIA 1984).

The applicant’s husband claims that it would be difficult for him to find employment in the Czech Republic because he does not speak the Czech language. The AAO finds that because the applicant’s husband does not speak the Czech language he would have difficulties obtaining employment in the Czech Republic. But as stated in *Matter of Ige*, other factors, such as advanced age or severe illness, need to combine with economic detriment to make removal extremely hard on the applicant’s husband. The applicant’s husband is 38 years old and is healthy and physically able to seek employment in the Czech Republic. The additional factors needed to combine with economic detriment in order to find the hardship to the applicant’s husband as extreme are missing.

It is noted that difficulties in obtaining employment in a foreign country are not sufficient to establish extreme hardship. See, e.g., *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); and *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) (“difficulty in finding employment or inability to find employment in one’s trade or profession is mere detriment”).

The applicant's husband indicates that he will no longer have a window cleaning business if he were to live in the Czech Republic or in Albania. In *Chokloikaew v. INS*, 601 F.2d 216 (5th Cir. 1979) the court states that "[e]conomic detriment, including a loss of investment, does not compel a finding of "extreme hardship."

The submitted country report on Albania is insufficient to substantiate the claim that it will be unsafe for the applicant's husband to live there because of civil and political unrest. "General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996) (citation omitted). Furthermore, no documentation has been submitted to demonstrate that the applicant's family members who live in Albania have had specific incidents of threats or violence directed against them. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel states that the average monthly salary in 2005 in the Czech Republic was \$287 and in Albania it was \$213. Although the average salary in the Czech Republic is substantially lower than in the United States, the court in *Shoostary v. INS*, 39 F.3d 1049, 1051 (9th Cir. 1994) states that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy."

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.